

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)

v.)

HABEEB ADEOLA AZEEZ)

CRIMINAL NO. 03-10350-RCL

**OPPOSITION OF THE UNITED STATES TO
DEFENDANT HABEEB ADEOLA AZEEZ'S MOTION TO SUPPRESS**

I. INTRODUCTION

Defendant Habeeb Adeola Azeez ("Azeez") has filed a motion to suppress the fruits of a border search of his luggage ("Azeez Motion"). Specifically, Azeez moves for the suppression of approximately 1.3 kilograms of heroin discovered inside the railings and handles of his two suitcases on the basis that the seizure was made pursuant to a "non-routine" search for which the government lacked reasonable suspicion. Motion at 2-4. Azeez claims that the search was rendered non-routine because the Customs officials conducting the search allegedly "drilled" into the suitcases. Id. This claim has no merit.

As argued more fully below, the evidence at issue was seized during the course of a routine border inspection, as the drugs were discovered without any "drilling" or any other actions that could reasonably be construed as transforming the inspection of Mr. Azeez's luggage from a routine to a non-routine border search. Moreover, even if the disputed search could be considered nonroutine, the

circumstances leading to the discovery of the illegal narcotics provided the officials executing the search with reasonable articulable suspicion that the luggage contained contraband. Accordingly, Azeez's motion to suppress should be denied.

II. STATEMENT OF FACTS¹

Azeez arrived at Logan Airport on Saturday, October 18, 2003, aboard Lufthansa Airlines Flight 422 from Frankfurt, Germany. McGrath Aff., ¶ 3. Upon the flight's arrival, Azeez deplaned with the other passengers in Terminal E, which is designated for the arrival of international flights, and presented himself at the "Unified Primary" area on the second level of the terminal, where all international passengers are required to produce their travel documents.

Id. The inspector who inspected Azeez's travel documents noticed that Azeez had been linked in the Customs "TECS" computer system to a Nigerian heroin swallower who had been apprehended at Los Angeles International Airport four months earlier. Accordingly, the inspector designated Azeez for a secondary Customs inspection. Id. The inspector also

¹ The following facts are based upon the Affidavit of Senior Inspector James P. McGrath of the United States Department of Homeland Security, Customs and Border Protection ("CBP"). Inspector McGrath's Affidavit is attached hereto as Exhibit A, and is cited herein as "McGrath Aff., ¶ ____."

placed the notation "possible TECS match" into the TECS computer system. Id.

Senior Inspector McGrath first encountered Azeez, as Azeez approached the exit to the U.S. Customs area on the ground level of Terminal E, where he conducted a secondary inspection of Azeez. Id., ¶ 4. First, Inspector McGrath asked Azeez to place his luggage on an inspection table. In response, Azeez removed two identical bluish green suitcases from a push cart (hereinafter "Bag #1" and "Bag #2") and placed them on the table in front of Inspector McGrath. Id. Inspector McGrath asked Azeez how long he had owned the suitcases, and Azeez replied that he had purchased them the previous day. Id. Inspector McGrath inspected the claim tags produced by Azeez (upon which the name "Azeez" was printed) and determined that they matched the baggage tags affixed to the two suitcases. Id. Inspector McGrath then conducted a physical examination of the suitcases.

Inspector McGrath did not notice anything unusual about the interior of the bags -- Bag #1 was filled with African-style clothing and other personal effects, and Bag #2 was filled with various foodstuffs. Id., ¶ 5. However, Inspector McGrath noticed that the retractable handles connected to the wheeling mechanism on each suitcase neither fully extended outward, nor extend evenly. He also noticed

that the retractable trays on the bottom of each suitcase (which are designed to extend outward to hold additional luggage) did not extend at all. Id. While he examined the suitcases, Inspector McGrath asked Azeez about the purpose of his visit to the United States, and Azeez stated that he had come to visit his daughter. Id. Azeez also stated that he had another daughter who lived in Los Angeles, whom he had visited in May, 2003, but that he had no other relatives in the United States. Id.

At this point, Inspector McGrath queried the TECS computer system and learned the reason Azeez had been referred for secondary inspection, i.e., that Azeez and a Nigerian internal body carrier both had provided the same fictitious address to Customs officials at Los Angeles International Airport. Id., ¶ 6. Shortly thereafter, CBP Inspector John Galvin came to assist Inspector McGrath. Id. Inspector Galvin took Azeez's Customs Declaration and reviewed the TECS record on Azeez. Upon noticing in the TECS record that Azeez and the internal courier from Los Angeles were linked through the use of the same fictitious address, Inspector Galvin used the internet website "Mapquest" to query the address on Azeez's present Customs Declaration -- "3504 Midfield Way, Boston." Id. The

Mapquest inquiry indicated that this address did not exist in Boston, Massachusetts. Id.

Inspector McGrath and Inspector Galvin then stepped approximately five feet away from Azeez to discuss their respective findings. Id., ¶ 7. While the inspectors were engaged in this discussion, Azeez attempted to remove his suitcases from the inspection table and place them back onto his push cart. Id. Upon noticing this, Inspector McGrath advised Azeez to leave the luggage on the table. Id. Inspector Galvin then questioned Azeez about the address on his Customs Declaration, specifically inquiring about where in Boston the address existed. Azeez replied that he was not sure, and that the address could be either in Boston or Houston. Id., ¶ 8. Inspector Galvin then asked Azeez who was coming to pick him up at the airport, and Azeez replied that his brother-in-law was coming. Id. The inspectors again stepped away from Azeez to discuss the situation, and during this subsequent conversation, Azeez again attempted to remove the suitcases from the inspection table, and Inspector McGrath again advised him to leave the suitcases where they were. Id.

Shortly thereafter, Inspectors Thomas Harrington and Michael Sweeney came to assist in the inspection. Id., ¶ 9. Inspector McGrath notified the other inspectors that the

handles at the top of the suitcases did not extend properly, and that the pullout trays at the bottom of the suitcases did not extend at all. Id. He then removed the contents from each suitcase; provided Bag #1 to Inspector Harrington and Bag #2 to Inspector Sweeney; and asked the inspectors to x-ray the suitcases. Id. The inspectors performed an x-ray and a physical examination of each suitcase. Id. The x-rays results were inconclusive, as was Inspector Harrington's physical examination of Bag #1.

However, Inspector Sweeney, during his physical examination of Bag #2, found cause to believe that one of the metal railings on the bottom of that suitcase had been tampered with. Id. Specifically, Inspector Sweeney observed that there were two identical metal railings at the bottom of the suitcase, which extended from the front of the suitcase (where there was an auxiliary tray for carrying of additional luggage) to the rear of the suitcase (where the wheeling mechanism was located). He also noticed that one of these railings was missing a plastic plate at its base that should have connected the railing to the suitcase's wheeling mechanism. Id. As such, the lower end of the railing was unattached at the bottom and appeared to have been tampered with. Id. Inspector Sweeney grabbed this railing with his hand, and, with "minimal effort," pulled it

away from the bottom plate of the suitcase. The top portion of the railing remained connected. Id.

Inspector Sweeney pulled the railing out far enough to notice that a small, thin piece of plastic had been stuffed approximately one-quarter (1/4) inch into it. Id., ¶ 10. Upon removing the piece of plastic, the inspectors saw that the interior of the railing had been hard-packed with a white powdery substance. Id. This substance was field tested, and yielded a positive result for the presence of opiate alkaloids, which is consistent with heroin. Id. Upon this discovery, the inspectors used a combination of a screwdriver and a hammer to remove the plastic plate covering the other railing, and an inspector used his hand to pull this second railing away from the wheeling mechanism. This procedure revealed more of the same white powdery substance, which also tested positive for the presence of heroin. Id. At this point, the inspectors used a combination of a screwdriver, a hammer, a chisel, and a knife to probe and pry open the other railings and the handles of both suitcases, which yielded additional white powdery substances that field tested positive for heroin. Id.

III. ARGUMENT

Azeez apparently concedes that the search of his luggage in this case occurred at the functional equivalent of the international border, as his brief relies solely upon cases involving border searches. See Azeez Motion at 3-4.² As such, absent some extraordinary circumstance, the search at issue would be considered "routine" and would not be subject to "any requirement of reasonable suspicion, probable cause, or warrant." United States v. Montoya de Hernandez, 473 U.S. 531, 538 (1985). See also United States v. Beras, 183 F.3d 22, 25-26 (1st Cir. 1999) ("[r]outine searches of the persons and effects of entrants are not subject to any requirement of reasonable suspicion, probable cause, or warrant.") (quoting Montoya de Hernandez).

However, citing United States v. Robles, 45 F.3d 1 (1st Cir. 1995), Azeez argues that the search of his luggage in this case was "non-routine," because the Customs officials allegedly "disassembled the luggage using a process which

² See also Almeida-Sanchez v. United States, 413 U.S. 266, 273 (1973) ("[A] search of the passengers and cargo of an airplane arriving at a St. Louis airport after a nonstop flight from Mexico City would clearly be the functional equivalent of a border search."); United States v. Braks, 842 F.2d 509, 512-513 (1st Cir. 1988) (analyzing search of passenger arriving at Logan Airport from Beirut, Lebanon as a "border search"); United States v. Robles, 45 F. 3d 1, 12 (1st Cir. 1995) (defendant conceded that Logan Airport was "the functional equivalent of an international border").

included drilling into the handle." Azeez Motion at 2, 4.³ This argument, however, is unavailing. As demonstrated below, Robles is inapposite to the instant case, as the Customs officials discovered the heroin in Azeez's luggage without any "exploratory drilling." Accordingly, no level of suspicion was required to effect the search.

A. The Search of Azeez's Luggage Was a "Routine" Border Search Requiring No Suspicion.

None of the actions taken by the Customs officials prior to the discovery of the heroin, whether viewed in isolation or in combination, constituted a "non-routine" border search. As set forth above, after Azeez placed his luggage on the secondary inspection table, the sum total of the ensuing border search consisted of the following: (1) Inspector McGrath examined the retractable handles and pullout trays of each suitcase; (2) Inspector McGrath removed the contents of the suitcases and inspected their interior linings; (3) Inspectors Sweeney and Harrington took the suitcases to be x-rayed and conducted their own physical examinations of the suitcases; and (4) after noticing the loose railing on Bag #2 that appeared to have been tampered

³ Azeez also cites United States v. Molina-Tarazon, 297 F. 3d 709 (9th Cir. 2002) as support for this argument. However, Molina-Tarazon was expressly overruled by the Supreme Court in United States v. Flores-Montano, 2004 WL 609791 (March 30, 2004), which is discussed below.

with, Inspector Sweeney used his hand, and with "minimal effort," pulled the railing away from the base so that he could see whether the railing contained any contraband. None of these actions individually, nor in combination, transformed the inspection of Azeez's luggage into a "non-routine" border search.

Despite his attempt to distinguish this case from the Supreme Court's recent decision in United States v. Flores-Montano, 2004 WL 60971 (March 30, 2004), the search of Azeez's luggage in this case was no more intrusive than the border search in that Flores-Montano, which the Court classified as "routine". Specifically, in that case, while the defendant's automobile was stopped at a Customs station on the United States/Mexico border, a Customs official inspected the vehicle, instructed the defendant to step out of the car, and the following search of the vehicle's gas tank ensued:

[A] second customs inspector inspected the gas tank by tapping it, and noted that the tank sounded solid. Subsequently, the inspector requested a mechanic under contract with Customs to come to the border station to remove the tank. Within 20 to 30 minutes, the mechanic arrived. He raised the car on a hydraulic lift, loosened the straps and unscrewed the bolts holding the gas tank to the undercarriage of the vehicle, and then disconnected some hoses and electrical connections. After the gas tank was removed, the inspector hammered off bondo (a putty-like hardening substance that is used to seal openings)

from the top of the gas tank. The inspector opened an access plate underneath the bondo and found 37 kilograms of marijuana bricks. The process took 15 to 25 minutes.

2004 WL 609791 at 2.

Relying heavily upon United States v. Molina-Tarazon, 279 F. 3d 709 (9th Cir. 2002), in which the Ninth Circuit had decided that the removal and dismantling of a vehicle's gas tank constituted a non-routine border search, the defendant in Flores-Montana moved to suppress the marijuana seized from his vehicle on the basis that the Customs officials lacked reasonable suspicion to remove the gas tank from the vehicle for the purpose of conducting the search.⁴ The Supreme Court rejected this argument, declaring: "Time and time again, we have stated that 'searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border.'" Id. at 3 (quoting United States v. Ramsey, 431 U.S. 606, 616 (1977)). Accordingly, noting that "[a] gas tank search involves a brief procedure that can be reversed without damaging the safety or operation of the vehicle," the Court

⁴ As noted, Azeez also relies upon Molina-Tarazon in his motion to suppress. See Azeez Motion at 3.

concluded that the act of removing, disassembling and searching a car's fuel tank is a routine border search requiring no suspicion. Id. at 4.

In the instant case, the steps taken by the Customs officials that led to the discovery of the heroin were far less intrusive and involved than those taken in Flores-Montano, which included the calling of a mechanic to the scene who "loosened" the straps and "unscrewed" the bolts holding the gas tank, and "disconnected" hoses and electrical connections. Flores-Montano, supra at 2. After the gas tank was removed, an inspector then "hammered off" the putty-like hardening substance that had been used to seal openings of the gas tank. Id.

By contrast, to expose the heroin secreted within the railings of Azeez's suitcases, the Customs officials in this case visually appraised the suitcases; manually manipulated their handles and pullout trays; removed their contents, ran them through an x-ray machine; and, after noticing that one of the railings on Bag #2 (a suitcase that supposedly had been purchased the previous day) was loose, used "minimal effort" to manually pull the railing away from the base of the suitcase (a similar process to the disconnection of the hoses to gas tank of the vehicle in Flores-Montano). Once the railing was separated from the plate and the inspector

saw a plastic substance inside of the railing, like the officer removing the bondo in Flores-Montano, the inspectors in this case were permitted to remove the plastic to determine whether it was hiding any contraband. After the inspectors observed the heroin concealed in the railing, the government had probable cause to not only seize both suitcases, but also to arrest the defendant. By the same token, at a minimum, the government also had reasonable suspicion to disassemble Bag #2 to determine whether the other railings also contained contraband, and to search Bag #1 in a similar manner.

B. Robles Does Not Apply Because No "Exploratory Drilling" or Significant Force Was Used.

As noted above, the main case upon which Azeez relies, United States v. Robles, is inapposite to the facts of this case because here, unlike in Robles, the contraband was discovered without any drilling into the suitcases.⁵ In

⁵ Robles involved the border search of a metal cylinder that had been shipped to the United States from Columbia. After an x-ray and a dog sniff both proved inconclusive, the Customs official drilled a whole into the cylinder, exposing a cache of marijuana. Noting that the government had conceded that the drilling of the cylinder was "non-routine," the court looked to United States v. Braks, 842 F. 2d 509 (1st Cir. 1988) for the factors to be considered in determining whether the search at issue was non-routine. Robles at 5. However, the court focused on one factor only -- whether force was employed -- and finding that the drilling at issue required the use of force, concluded that the search in that case was "not a routine search." Id.

Flores-Montano, the Supreme Court rejected a similar reliance on Robles by the defendant in that case:

We have no reason at this time to pass on the reasonableness of drilling, but simply note the obvious factual difference that this case involves the procedure of removal, disassembly, and reassembly of a fuel tank, rather than potentially destructive drilling."

2004 WL 609791 at 4, n.2. The government contends that the Supreme Court, thereby expressly limited Robles to cases involving "potentially destructive drilling." As such, given that there was no such drilling (or any drilling at all, for that matter) in accessing the heroin inside Azeez's luggage, Robles does not apply to the facts of this case.

Nevertheless, it is anticipated that the defendant will also argue that the holding in Robles is not limited to cases involving exploratory drilling, but also is applicable to any border search in which force is used to conduct the search. See, e.g., Azeez's Motion at 4 (arguing that Azeez's luggage was taken from him and "dismantled with force"). However, as demonstrated above, prior to the discovery of the heroin in Bag #2, the only "force" used in relation to the search of Azeez's luggage was the degree needed to manually separate the metal railing from the bottom plate of the wheeling mechanism. Once the Inspectors did so, they discovered the plastic inside the railing,

which they removed, to expose the heroin Azeez now moves to suppress. The "minimal effort" used to pull the railing from the plate is a far cry from the level of force associated with the drilling carried out in Robles. Thus, the minimal degree of force used to effect the instant search did not give rise to a "non-routine" border search.⁶ Accordingly, no level of suspicion was needed to justify the search in this case.

C. Even If Reasonable Suspicion Were Required That Standard Was Met.

Even if it were the case that the inspectors needed reasonable suspicion in order to search Azeez's suitcases,

⁶ In a real sense, almost all border searches of a closed container require the use of some level of force (however minimal) to gain access to the contents of the container (e.g., the unscrewing of a jar to view its contents; the manual opening of the lid of a car's trunk; the breaking of the tape of a closed and sealed carton, etc.). If such minimal levels of force were to be considered in distinguishing routine from non-routine searches, then virtually every border search would be subject to challenge on this basis. The government is unaware of any cases in which the courts have engaged in this type of "hair-splitting" force comparison.

Moreover, United States v. Flores-Montano, supra., supports the conclusion that the force used by the inspectors in this case did not convert the search into a non-routine border search. As noted above, in Flores-Montano, the Court classified as "routine" a border search involving the removal and disassembly of a vehicle's fuel tank, to include the loosening of straps, the unscrewing of bolts, the disconnection of hoses and electrical connections, and the hammering of a putty-like hardened substance from the top of the tank. In this case, the inspectors used far less force.

the facts support a finding that the inspectors did, in fact, have reasonable suspicion to believe that Azeez was concealing contraband: (1) the inspectors knew that Azeez and a Nigerian heroin swallower both had provided the same fictitious address to Customs officials at the Los Angeles Airport; (2) the address on the Customs Declaration Azeez presented to Inspector McGrath also appeared to be fictitious; (3) Azeez did not know whether the address on his Customs Declaration was in Boston or Houston; (4) a physical inspection of the two suitcases revealed that the retractable handles and pullout trays on both suitcases -- which Azeez claimed to have purchased the previous day -- did not function properly; (5) Azeez repeatedly attempted to remove the suitcases from the inspection table, after being told not to do so; (6) after stating that his two daughters were the only relatives he had in the United States, Azeez later claimed that his brother in law was picking him up at the airport; and (7) one of the railings at the bottom of Bag #2 was missing a plastic plate covering, and appeared to have been tampered with. See McGrath Aff., ¶¶ 3-10.


Armed with these facts, the Customs officials certainly had reasonable suspicion to pull an already-loosened railing away from the base plate of Bag #2 to determine whether there was any contraband inside the railing.

IV. CONCLUSION

For the foregoing reasons, Azeez's motion to suppress should be denied.


Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: 
DICKENS MATHIEU
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

This is to certify that I have this 16th day of April, 2004 caused a copy of the foregoing document addressed to Page Kelley to be placed in the mailbox of the Federal Defender Office, which is maintained at the Clerk's Office of the United States District Court for the District of Massachusetts.


DICKENS MATHIEU